

GAHC010069682023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/888/2023

THE BODOLAND TERRITORIAL COUNCIL (BTC) AND ANR.
REP. BY ITS PRINCIPAL SECRETARY, KOKRAJHAR, ASSAM.

2: THE PRINCIPAL SECRETARY

BODOLAND TERRITORIAL COUNCIL (BTC)
BODAFANAGAR
P.O. AND DIST. KOKRAJHAR
BTAD
PIN-783370
ASSAM

VERSUS

THE STATE OF ASSAM AND 18 ORS
REP. BY THE COMMISSIONER AND SECY., W.P.T. AND B.C. DEPTT., GOVT.
OF ASSAM, DISPUR-05, ASSAM.

2:THE COMMISSIONER AND SECRETARY
TO THE GOVERNOR OF ASSAM
RAJ BHAWAN
GUWAHATI-781001.

3:SHRI NIREN CHANDRA ROY

S/O. LT. DINONATH ROY
R/O. VILL. TANGABARI
P.O. KAJALGAON
DIST. CHIRANG
PIN-783385
ASSAM.

4:DILLU SHARMA

S/O. LT. SIBALAL SHARMA
VILL. HALIGHAR
ROWTA CHARIALI
P.O. TOWTA
DIST. UDALGURI
PIN-784508
ASSAM.

5:JAMINI BALA BRAHMA
D/O. LT. HARICHARAN BRAHMA
VILL. DAHALAPARA
P.O. KHAGRABARI
DIST. CHIRANG
PIN-783380
ASSAM.

6:KAMAL SINGH BRAHMA
S/O. LT. KALARAM BRAHMA
VILL. NO.1 DAGORPARA
P.O. NEHRUBAZAR
DIST. CHIRANG
PIN-783393.

7:DILIP SETHIA
S/O. LT. MOHAN LAL SETHIA
R/O. J.D. ROAD
KOKRAJHAR TOWN
WARD NO.5
P.O. KOKRAJHAR
DIST. KOKRAJHAR
PIN-783370
ASSAM.

8:BAKTAR ALI AHMED

S/O. LT. IMANUDDIN AHMED
R/O. WARD NO.3
KOKRAJHAR
DIST. KOKRAJHAR
PIN-783360
ASSAM.

9:JAYLAL POKHREL
S/O. LT. BHIM PRASAD POKHREL
R/O. VILL. NIKASHI
DHANSRIPUR
P.O. NIKASHI
DIST. BAKSA

PIN-781372
ASSAM.

10:GITIMA DAS
D/O. DUGESWAR MEDHI
R/O. WARD NO.4
P.O. GOSSAIGAON
DIST. KOKRAJHAR
PIN-783360
ASSAM.

11:KARUNA KANTA SWARGIARY
D/O. LT. DHARMESWAR SWARGIARY
R/O. WARD NO.2
P.O. TANGLA
DIST. UDALGURI
PIN-784521
ASSAM.

12:RAJENDRA NATH BRAHMA (CHAIRMAN)

S/O. LT. CHANA RAM BRAHMA
R/O. VILL. HABRUBARI
P.O. DOTMA
DIST. KOKRAJHAR
PIN-783347
ASSAM.

13:SAHABUDDIN ALI AHMED
S/O. LT. SUAB ALI
R/O. VILL. BHOGPUR
P.O. BHOGPUR
DIST. BAKSA
PIN-781366
ASSAM.

14:MONESWAR KUMAR RABHA
S/O. RATI KANTA RABHA
VILL. PADMAPARA
P.O. PADDAPAR
DIST. BAKSA
PIN-781367
ASSAM.

15:HOPNA SOREN
S/O. LT. BARKA SOREN
VILL. MESTABARI (KHAPORGAON)
P.O. PATGAON

DIST. KOKRAJHAR
PIN-783346
ASSAM.

16:BISHIRAM NARZARY
S/O. LT. KHUCHU RAM NARZARI
VILL. BAMUNGAON
P.O. SILGARA
DIST. KOKRAJHAR
PIN-783370
ASSAM.

17:PIOLI PHUKAN NATH
S/O. LT. NISHI KANTA NATH
R/O. VILL. BALAJAN TINIALI
P.O. HOLTUGAON
DIST. KOKRAJHAR
PIN-783370
ASSAM.

18:SHYAMAL SARKAR
S/O. LT. HARIMOHAN SARKAR
R/O. VILL. NABINPATTY
WARD NO.1
P.O. TANGLA
DIST. UDALGURI
PIN-784521
ASSAM.

19:GEORGE DIPAK NAG
S/O. JULIUS NAG
R/O. BHOLLAKASH
P.O. BATAKUCHI
DIST. UDALRUGI
PIN-784510
ASSAM

Advocate for the Petitioner : SC, BTC

Advocate for the Respondent : SC, WPT AND BC

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
ORDER

Date : 24-05-2023

Heard Mr. D. Saikia, learned Sr. standing counsel, BTC assisted by Mr. R.K. Musahary, learned standing counsel, BTC appearing for the applicant. Also heard Mr. P. Mahanta, learned counsel for the writ petitioner/ opposite party.

As per Clause-5.4 of the Memorandum of Settlement dated 10-02-2003 entered into by and between the Bodoland Territorial Council (BTC) and the State of Assam, the BTC is required to constitute Central Selection Board (CSB) for conducting selection process for making appointments within the BTC area. Accordingly, vide notification dated 22-06-2018, a CSB constituted by the writ petitioners was notified by the authorities. However, subsequently, the Principal Secretary to the BTC, i.e. the respondent No. 4 had issued another order dated 20-06-2020 whereby, the appointment/ nomination of the petitioners as Chairman and Members of the CSB was cancelled. Aggrieved by the order dated 20-06-2020, the Chairman and the Members of the CSB as writ petitioners, have approached this Court by filing the connected with petition. After hearing the submission of learned counsel for both the sides, this Court had passed order dated 24-08-2020 in the connected writ petition issuing notice. There was no stay order reinstating the writ petitioners back in office. The learned Single Judge had, however, observed that in the event the elected body or the respondent authorities intend to constitute a fresh CSB, the same be done only by taking leave of this Court. The present application has accordingly been filed by the BTC as well as the Principal Secretary to the BTC as applicants, seeking leave of the Court to constitute the CSB.

By referring to the statement made in the application, Mr. Saikia submits that the term of the Board constituted by the writ petitioners as Chairman and the Members would any way come to an end on 21-06-2023. However, the restoration of the petitioners is not possible unless they succeed in the writ petition. On the contrary, there are more than 1000 posts lying vacant in the BTC area, which could not be filled up till today due to the absence of CSB. Therefore, the authorities have approached this Court by filing this I.A. seeking leave to constitute CSB.

Mr. Mahanta, on the other hand, has argued that since the respondents have not filed pleadings despite the order of the learned Single Judge, the writ petition be taken up for hearing at an early date and till then, no such leave be granted.

By referring to a decision of the Division Bench of this Court rendered in the case of ***Sub-Divisional Welfare Boards for ST & Ors. Vs. The State of Assam represented by the Commissioner & Secretary, WPT&BC Department & Ors.*** reported in ***2017 (5) GLR 177***, Mr. Mahanta submits that in case of a statutory body, which had a fixed tenure, doctrine of pleasure cannot be invoked to dismiss such body. Therefore, submits Mr. Mahanta, his clients have a good case on merit.

It appears from the materials on record that since 24-08-2020 till the time of filing the present I.A., the writ petitioners have not made any prayer before this Court for expeditious hearing and disposal of the writ petition, although they were out of office in the absence of any interim order passed by this Court. The prayer made in the I.A. is not only in terms of the leave granted by the order dated 24-08-2020 but is also meant to subserve a larger public purpose, i.e. conducting recruitment for filling up posts in Govt.

offices in the BTC area. What is to be borne in mind is that writ court would give primacy to public interest at large over private interest of some individuals. If the BTC authorities are unable to fill up nearly 1000 vacant posts due to absence of a CSB, it cannot be said that leave as sought for from this Court should be denied merely because it would subserve the private interest of the petitioners. In any case, since the writ petitioners are already out of office, in the absence of any specific direction/ order from the Court, they cannot be restored back in office.

As such, leave as prayed for by the applicants is hereby granted. The applicants may proceed to constitute a new CSB as per the requirement of law.

However, constitution of such CSB shall be subject to final order(s) that may be passed in the connected writ petition.

With the above observation, this I.A. stands disposed of.

JUDGE

GS

Comparing Assistant